

IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA

ALLEN R. HUDSON, an individual, and
NINA H. MCGINNIS, an individual,

Plaintiffs,

v.

KAY IVEY, Chairman of the Board of PACT;
CALLAN ASSOCIATES, INC., a foreign corporation
registered to do business in the State of Alabama; INTECH
INVESTMENT MANAGEMENT, LLC, a foreign
corporation registered to do business in the State of
Alabama; RHUMBLINE ADVISERS, a foreign
corporation registered to do business in the State of
Alabama; C.S. MCKEE, LP, a foreign corporation
registered to do business in the State of Alabama;
EARNEST PARTNERS, LLC, a foreign corporation
registered to do business in the State of Alabama;
TURNER INVESTMENT PARTNERS, INC., a foreign
corporation registered to do business in the State of
Alabama; ACADIAN ASSET MANAGEMENT, LLC,
a foreign corporation registered to do business in the State
of Alabama; PRINCIPAL GLOBAL INVESTORS, LLC,
a foreign corporation doing business in the State of
Alabama; STERNE AGEE AND LEACH, INC., a foreign
corporation registered to do business in the State of
Alabama; and WESTERN ASSET MANAGEMENT
COMPANY, a foreign corporation registered to do
business in the State of Alabama;

AND FICTITIOUS PARTIES NUMBERED AS
FOLLOWS:

FILED

MAR 19 2009

TED HOOKS
CIRCUIT CLERK
CALHOUN COUNTY, AL

CIVIL ACTION NO. _____

PLAINTIFFS DEMAND A
JURY TRIAL

No. 1, whether singular or plural, that entity or those entities, that person or those persons who or which were in the business of providing and/or managing investments and/or investment services in a manner creating the basis of this suit; **No. 2**, whether singular or plural, that entity or those entities, that person or those persons who or which had the duty to supervise the person or persons who were in the business of providing or managing investments and/or investment services in a manner creating the basis of this suit **No. 3**, whether singular or plural, that entity or those entities who or which were the parent company and/or managing company having the right to and did control the methods and manner in which the subject investments were transacted and as such had the right to and did control the method and manner in which investments and/or investment decisions were provided creating the basis of this suit **No. 4**, whether singular or

plural, Plaintiffs hereby intending to designate that entity or those entities other than those entities described above, whose conduct contributed to cause the occurrence made the basis of this lawsuit; **No. 5**, whether singular or plural, Plaintiffs hereby intending to designate that entity or those entities other than those entities described above which was the predecessor corporation of any of the entities described above; **No. 6**, whether singular or plural, that entity or those entities who or which afforded any insurance coverage to any of the entities who's conduct made the basis of this lawsuit; **No. 7**, whether singular or plural, that entity or those entities who or which provided investment and/or financial research and/or data to the named entities and related to the conduct forming the basis of this lawsuit; **No. 8**, whether singular or plural, that entity or those entities who or which negligently hired or trained individuals entrusted with providing investment decisions and/or investment advice in an ethical and proper manner, **No. 9**, whether singular or plural, that entity or those entities other than those entities described above, which is the successor in interest of any of those entities described above; **No. 10**, whether singular or plural, that entity or those entities other than those entities described above, which was the predecessor corporation of any of the entities described above. Plaintiffs aver that the identities of the fictitious parties defendants are otherwise unknown to Plaintiffs at this time, or if their names are known to Plaintiffs at this time their identities as proper parties defendant are not known to Plaintiffs at this time, but their true names will be substituted by amendment when ascertained,

Defendants.

COMPLAINT

PARTIES

1. Plaintiff, Allen R. Hudson, is over the age of nineteen and is a resident of Calhoun County, Alabama..
2. Plaintiff, Nina H. McGinnis, is over the age of nineteen and is a resident of Calhoun County, Alabama.
3. Defendant, Kay Ivey, Chairman of the Board of PACT, is over the age of nineteen and is a resident of Alabama.
4. Defendant, Callan Associates, Inc., is a foreign corporation registered to do business in the State of Alabama.

5. Defendant, Intech Investment Management, LLC, is a foreign corporation registered to do business in the State of Alabama.

6. Defendant, Rhumblin Advisers, is a foreign corporation registered to do business in the State of Alabama.

7. Defendant, C.S. McKee, LP, is a foreign corporation registered to do business in the State of Alabama.

8. Defendant, Earnest Partners, LLC, is a foreign corporation registered to do business in the State of Alabama.

9. Defendant, Turner Investment Partners, Inc., is a foreign corporation registered to do business in the State of Alabama.

10. Defendant, Acadian Asset Management, LLC, is a foreign corporation registered to do business in the State of Alabama.

11. Defendant, Principal Global Investors, LLC, is a foreign corporation registered to do business in the State of Alabama.

12. Defendant, Sterne, Agee & Leach, Inc., is a foreign corporation registered to do business in the State of Alabama.

13. There may be other entities whose true names and identities are unknown to the Plaintiffs at this time who may be legally responsible for the claim(s) set forth herein who may be added by amendment by the Plaintiffs when their true names and identities are accurately ascertained by further discovery. Until that time, the Plaintiffs will designate these parties in accordance with ARCP 9(h). The word "entity" as used herein is intended to refer to and include any and all legal entities including individual persons, any and all forms of partnership any and

all types of corporations and unincorporated associations. The symbol by which these parties Defendants are designated is intended to include more than one entity in the event that discovery reveals that the descriptive characterizations of the symbol applies to more than one "entity". In the present action, the parties Defendants whom the Plaintiffs must include by descriptive characterization are as follows:

No. 1, whether singular or plural, that entity or those entities, that person or those persons who or which were in the business of providing and/or managing investments and/or investment services in a manner creating the basis of this suit; **No. 2**, whether singular or plural, that entity or those entities, that person or those persons who or which had the duty to supervise the person or persons who were in the business of providing or managing investments and/or investment services in a manner creating the basis of this suit **No. 3**, whether singular or plural, that entity or those entities who or which were the parent company and/or managing company having the right to and did control the methods and manner in which the subject investments were transacted and as such had the right to and did control the method and manner in which investments and/or investment decisions were provided creating the basis of this suit **No. 4**, whether singular or plural, Plaintiffs hereby intending to designate that entity or those entities other than those entities described above, whose conduct contributed to cause the occurrence made the basis of this lawsuit; **No. 5**, whether singular or plural, Plaintiffs hereby intending to designate that entity or those entities other than those entities described above which was the predecessor corporation of any of the entities described above; **No. 6**, whether singular or plural, that entity or those entities who or which afforded any insurance coverage to any of the entities who's conduct made the basis of this lawsuit; **No. 7**, whether singular or plural, that entity or those entities who or

which provided investment and/or financial research and/or data to the named entities and related to the conduct forming the basis of this lawsuit; **No. 8**, whether singular or plural, that entity or those entities who or which negligently hired or trained individuals entrusted with providing investment decisions and/or investment advice in an ethical and proper manner, **No. 9**, whether singular or plural, that entity or those entities other than those entities described above, which is the successor in interest of any of those entities described above; **No. 10**, whether singular or plural, that entity or those entities other than those entities described above, which was the predecessor corporation of any of the entities described above. Plaintiffs aver that the identities of the fictitious parties Defendants are otherwise unknown to Plaintiffs at this time, or if their names are known to Plaintiffs at this time their identities as proper parties Defendants are not known to Plaintiffs at this time, but their true names will be substituted by amendment when ascertained.

FACTUAL ALLEGATIONS

14. Since approximately 1989, the PACT (Prepaid Affordable College Tuition – hereinafter “PACT”) program, administered by and through the Alabama State Treasurer’s Office, is a Section 529 program that has allowed individuals to pre-pay for in-state public, private and/or out-of-state colleges.

15. Thousands of individuals, both State of Alabama residents and non-residents, have enrolled, signed a contract and made timely payments in said PACT plan in anticipation of receiving the following benefits:

- (a) The PACT program makes payments directly to the institution.
- (b) The PACT four-year contract covers in-state public tuition for up to 128

semester hours, or the equivalent at institutions on a quarter or other academic term basis.

- (c) PACT pays qualified fees for eight semesters, or the equivalent number for colleges and universities on another academic term basis.
- (d) The PACT one-year contract covers in-state public tuition for up to 32 semester hours, or the equivalent at institutions on a quarter or other academic term basis.
- (e) PACT will also pay qualified fees for two semesters, or the equivalent number for colleges and universities on another academic term basis.
- (f) A PACT student may transfer from one college to another and unlimited transfers are permitted.
- (g) If a student chooses to attend a private or out-of-state institution, a weighted average of tuition and qualified fees at the Alabama four-year public institutions, calculated annually, will be paid to the private or out-of-state school.
- (h) Three types of payment plans are available for both contract options: a single, lump-sum amount; a five-year plan of 60 monthly payments (which is only available for students in the seventh grade or below); and an extended plan of monthly payments until the student reaches college age.

16. On or about October 29, 2008, Plaintiff Allen R. Hudson purchased a PACT contract for beneficiary Emma L. Hathaway, Account No. 1008401113, for a lump-sum payment of \$24,149.00, including the \$100.00 application fee. The contract provides 128.0 semester

hours (192.0 quarter hours) of Alabama public undergraduate tuition and 8.0 semester (12.0 quarter) payment of qualified fees. Beneficiary Emma L. Hathaway's projected enrollment date is 2026.

17. On or about December 26, 2008, Plaintiffs Allen R. Hudson and Nina H. McGinnis purchased a PACT contract for beneficiary Stevie A. Graves, Account No. 1007400455, for a lump-sum payment of \$22,031.00, including the \$100.00 application fee. The contract provides 128.0 semester hours (192.0 quarter hours) of Alabama public undergraduate tuition and 8.0 semester (12.0 quarter) payment of qualified fees. Beneficiary Stevie A. Graves' projected enrollment date is 2025.

18. To cover the cost of the PACT program, the State of Alabama and/or the PACT Board of Directors invests the funds in a variety of domestic and international stocks, domestic securities, and cash, by and through its primary adviser, Defendant Callan Associates, Inc. (hereinafter "Callan").

19. Subsequently, Defendant Callan directs the decisions pertaining to the aforesaid investments, which are made by nine individual investment firms, identified herein as the other named Defendants: INTECH Investment Management, LLC, Rhumblin Advisers, C.S. McKee, LP, Earnest Partners, LLC, Turner Investment Partners, Inc., Acadian Asset Management, LLC, Principal Global Investors, LLC, Sterne, Agee & Leach, Inc., and Western Asset Management Company.

20. On or about February 27, 2009, all PACT participants, including the Plaintiffs, were notified via letter from Kay Ivey, the Alabama State Treasurer, that the funds contributed by the Plaintiffs and/or other PACT contract holders, and subsequently invested and managed by the

aforesaid named Defendants, have lost approximately fifty percent (50%) of their value on the last fourteen (14) months.

21. Subsequently, on or about March 15, 2009, it was revealed that the State of Alabama now lacks the assets it requires to meet its obligations it has regarding the PACT contract that it holds with the Plaintiffs and other PACT contract holders.

22. Due to the Defendants' collective negligence, wantonness, breach of contract and/or failure to properly administer, invest and/or manage the investments relevant to the PACT plan, the Plaintiffs and/or other PACT contract holders and/or other PACT third-party beneficiaries are and/or will be unable to attend college as the PACT plan intended.

JURISDICTION AND VENUE

23. Venue is proper in the Circuit Court of Calhoun County because Plaintiffs entered into their contracts with the Defendants in Calhoun County.

COUNT ONE

NEGLIGENCE

24. Plaintiffs repeat and incorporate by reference all allegations contained in Paragraphs 1 through 23 as if fully set forth herein.

25. The Defendants, both named and fictitious, had a duty to the Plaintiffs to prudently manage, invest and/or provide sound financial advisement decisions regarding the PACT funds and/or monies invested on behalf of the Plaintiffs and/or their third-party beneficiaries.

26. The Defendants, both named and fictitious, breached this duty by negligently failing to prudently manage, invest and/or provide sound financial advisement decisions

regarding the PACT funds and/or monies invested on behalf of the Plaintiffs and/or third party beneficiaries.

27. Due to the negligence of the Defendants, both named and fictitious, the Plaintiffs and/or their third-party beneficiaries, have been damaged to the extent that their goal of receiving a college education for a child, family member or a loved one has been adversely affected and/or eliminated.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand Judgment against all Defendants, whether named or fictitiously described, for compensatory damages in an amount that the Plaintiffs would legally and justifiably be entitled to recover as determined by this Honorable Court, plus interest and costs.

COUNT TWO

WANTONNESS

28. Plaintiffs repeat and incorporate by reference all allegations contained in Paragraphs 1 through 27 as if fully set forth herein.

29. The Defendants, both named and fictitious, had a duty to the Plaintiffs to prudently manage, invest and/or provide sound financial advisement decisions regarding the PACT funds and/or monies invested on behalf of the Plaintiffs and/or their third-party beneficiaries.

30. The Defendants, both named and fictitious, breached this duty by wantonly failing to prudently manage, invest and/or provide sound financial advisement decisions regarding the PACT funds and/or monies invested on behalf of the Plaintiffs and/or third party beneficiaries.

31. Due to the wantonness of the Defendants, both named and fictitious, the Plaintiffs

and/or their third-party beneficiaries, have been damaged to the extent that their goal of receiving a college education for a child, family member or a loved one has been adversely affected and/or eliminated.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand Judgment against all Defendants, whether named or fictitiously described, for compensatory and punitive damages in an amount that the Plaintiffs would legally and justifiably be entitled to recover as determined by this Honorable Court, plus interest and costs.

COUNT THREE

BREACH OF CONTRACT

32. Plaintiffs repeat and incorporate by reference all allegations contained in Paragraphs 1 through 31 as if fully set forth herein.

33. The Defendants, both named and fictitious, had a contractual duty to the State of Alabama and/or the Alabama PACT Board of Directors to prudently manage, invest and/or provide sound financial advisement decisions regarding the PACT funds and/or monies invested on behalf of the Plaintiffs and/or their third-party beneficiaries.

34. The Defendants, both named and fictitious, breached this contractual duty by failing to prudently manage, invest and/or provide sound financial advisement decisions regarding the PACT funds and/or monies invested on behalf of the Plaintiffs and/or third party beneficiaries.

35. As third-party beneficiaries to any and all contracts between the State of Alabama and/or the PACT Board of Directors, the Plaintiffs have been damaged to the extent that their

goal of receiving a college education for a child, a family member or a loved one has been adversely affected and/or eliminated.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand Judgment against all Defendants, whether named or fictitiously described, for compensatory damages in an amount that the Plaintiffs would legally and justifiably be entitled to recover as determined by this Honorable Court, plus interest and costs.

COUNT FOUR

CLASS ALLEGATIONS

36. Plaintiffs repeat and incorporate by reference all allegations contained in Paragraphs 1 through 35 as if fully set forth herein.

37. Pursuant to Ala. R. Civ. P. 23(b)(3), the Plaintiffs seek to represent and allege damages to the following class in their claim for breach of contract:

- (a) All current and former enrollees in the PACT, both State of Alabama residents and non-residents, who have signed a contract and made timely payments in the PACT plan;
- (b) who have lost the payment of college tuition at a state institution for the beneficiary of their contract with PACT.

38. On information and belief, the class includes thousands of persons, making joinder of all of the class members impracticable.

39. There are common questions of law and fact common to all of the class members, to-wit: (1) whether or not it is a breach of duty for the Defendants to negligently fail to prudently manage, invest and/or provide sound financial advisement decisions regarding the PACT funds

and/or monies invested on behalf of the Plaintiffs and/or third party beneficiaries; (2) whether or not it is a breach of duty for the Defendants to wantonly fail to prudently manage, invest and/or provide sound financial advisement decisions regarding the PACT funds and/or monies invested on behalf of the Plaintiffs and/or third party beneficiaries; and (3) whether or not whether or not it is a breach of contractual duty for the Defendants to fail to prudently manage, invest and/or provide sound financial advisement decisions regarding the PACT funds and/or monies invested on behalf of the Plaintiffs and/or their third-party beneficiaries.

40. The claims of the Plaintiffs seeking to represent the class are typical of the claims of the class. The claims differ only in the amount of damages due.

41. The Plaintiffs will fairly and adequately protect the interests of the class, and Plaintiffs' counsel have extensive experience in mass tort litigation and the resources to pursue such claims on behalf of the class.

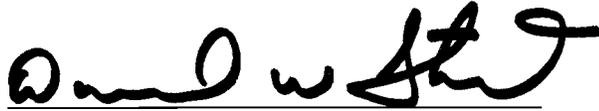
42. The aforementioned common questions of law and fact predominate over any questions affecting only individual class members. Identification of the class member and individual damage determinations can be easily and mechanically made from an examination of the Defendants' records of loss estimates in each of the Plaintiffs' separate accounts maintained by PACT.

43. On information and belief, the amount of additional money due to each class member is relatively small, and a class action would be superior to other available methods for the fair and efficient adjudication of the class members' claims.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand Judgment against all Defendants, whether named or fictitiously described, certifying the above class and awarding

compensatory damages and attorneys fees as allowed by law to each class member for breach of contract as alleged in Count One.

PLAINTIFFS DEMAND A TRIAL BY STRUCK JURY ON ALL COUNTS.



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Defendants to be served by certified mail at the following addresses:

1. Callan Associates, Inc.
c/o CSC Lawyers Incorporating Service, Inc.
150 So. Perry Street
Montgomery, Alabama 36104
2. INTECH Investment Management, LLC
c/o The Corporation Company
2000 Interstate Park Drive, Suite 204
Montgomery, Alabama 36109
3. RhumbLine Advisers
c/o Prentice Hall Corporation System
150 So. Perry Street
Montgomery, Alabama 36104

4. C.S. McKee, LP
c/o Capitol Corporate Services, Inc.
150 So. Perry Street
Montgomery, Alabama 36104
5. Earnest Partners, LLC
c/o The Corporation Company
2000 Interstate Park Drive, Suite 204
Montgomery, Alabama 36109
6. Turner Investment Partners, Inc.
c/o The Corporation Company
2000 Interstate Park Drive, Suite 204
Montgomery, Alabama 36109
7. Acadian Asset Management, LLC
c/o CSC Lawyers Incorporating Service, Inc.
150 So. Perry Street
Montgomery, Alabama 36104
8. Principal Global Investors, LLC
c/o CSC Lawyers Incorporating Service, Inc.
150 So. Perry Street
Montgomery, Alabama 36104
9. Sterne, Agee and Leach, Inc.
c/o William K. Holbrook
1200 AmSouth/Harbert Plaza
Birmingham, Alabama 35203
10. Western Asset Management Company
c/o National Registered Agents, Inc.
150 So. Perry Street
Montgomery, Alabama 36104